IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CRIMINAL APPLICATION No. 1350 of 2005

For Approval and Signature:

HONOURABLE MR.JUSTICE ANANT S.DAVE

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KISHORE K. KAHAR - Applicant(s)
Versus
STATE OF GUJARAT & 2 - Respondent(s)

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Appearance :
MR CB DASTOOR for Applicant(s) : 1,
RULE SERVED for Respondent(s) : 1 - 2.
Ld. Asst. Public Prosecutor, Ms.Hansa B. Punani for Respondent: 3

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CORAM : HONOURABLE MR.JUSTICE ANANT S.DAVE

Date : 26/10/2005

ORAL JUDGMENT

1. The order impugned in this petition dated 05.02.2005, under Article 226 of the Constitution of India passed by respondent no.2 in exercise of power under Section 56(b) of the Act and also the order in appeal dated 09.05.2005 passed by respondent

no.1 confirming the order dated 05.02.005 as unreasonable, arbitrary and violative of Article 14, 19 and 21 of the Constitution of India.

2. The show cause notice dated 24.10.2003 was issued, asking the petitioner to show cause as to why he should not be externed from the city limit of Ahmedabad Rural, Gandhinagar for the period of 2 years on the ground that the activities of the petitioner are illegal and violative. It also mentions about the inability on the part of the witnesses to disclose their names out of fear and three incidences have been narrated dated 12.09.2003 and 13.09.2003, by which it is alleged that the petitioner indulges into usage of abusive language, extorting money and misbehaving with women. The concerned authority has also relied upon various crime registered under Sections 327, 323, 294(2),

506(1) of Indian Penal Code. From the records, it appears that no written statements were made. However, the witnesses came to be examined in the month of December, 2003 and thereafter a lapse of about 13 months, the order of externment is passed by respondent no.2 by which he has externed the petitioner from the limit of Ahmedabad City, Rural as well the adjoining districts of Gandhinagar, Kheda and Mehasana for a period of two years. While passing the order, the externing authority has almost considered the materials of show cause notice and reproduced the same in the order. Being aggrieved by and dissatisfied with the order of externment, the appeal was preferred under Section 60 of the Act whereas specific plea was made about the delay of 14 months in passing the order of externment by the Externing Authority. However, the appellate authority, after

considering the submissions, rejected the appeal and confirmed the order of externment dated 05.02.2005 vide order dated 09.05.2005.

3. Learned advocate Shri Dastoor appearing for the petitioner has submitted that both the orders impugned in this petition passed by respondent nos. 1 and 2 have not taken into consideration the submissions canvassed by and on behalf of the petitioner. He has submitted that a specific plea raised of delay of about 14 months in passing the order of detention even though the statements of witnesses, pursuant to the show cause notice dated 24.10.2003 were recorded in the month of December, 2003 by the authority and mainly there is no case against the petitioner, which require exercise of powers under Section 56(b) of the Act. Relied upon the judgment of the

learned Single Judge Justice N.M.Mathur reported at 1997 Cr.L.R. (Guj.) 139 by which the concerned authorities were directed to complete the proceedings as far as possible preferably not later than 6 months while exercising powers under Section 56 of the Bombay Police Act. In the above judgment reliance was placed by the learned Single Judge of the Division Bench of Justice K.J.Vaidhya and Justice S.D.Dave (passed in S.C.A.No.1295/94 on dated 24.01.1995) where also limitations prescribed by this Court that the authority to exercise the powers within 6 months and to complete the proceedings accordingly.

4. Learned A.P.P. Mrs. Hansa Punani has submitted that considering the material on record, the concerned authorities have found the activities of the petitioner which require exercise of powers under the Act,

and, therefore, no interference is required under Article 226 of the Constitution of India.

5. Having considered the rival submissions and perusal of the records, it is found that the order of externment against the petitioner is passed on 05.02.2005 by the respondent no.2 after considering a long period of 14 months after the statements of witnesses came to be recorded and has gone beyond the prescribed limit of completing the proceedings under the act within period of 6 months as laid down by two decisions of this Court. There appears to be no reasonable explanation for delay, administration of the procedure as the case may be, in the circumstances the exercise of powers by the externing authority to extern the petitioner and non-consideration of the grounds in its correct perspective by the

appellate authority amounts unreasonable and arbitrary exercise in violation of Articles 14, 19 and 21 of the Constitution of India by which unreasonable restriction is to be imposed and the petitioner is deprived of his right to life and liberty not by the procedure as established by law, and therefore, both the orders are quashed and set aside.

6. For the reasons recorded hereinabove, the order of externing authority dated 05.02.2005 passed by the respondent no.2 and the order dated 09.05.2005 passed by the appellate authority confirming the order of externment passed against the petitioner, are hereby quashed and set aside. Rule is made absolute accordingly. Direct Service is permitted.

(ANANT S. DAVE, J.)

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